

CHAPTER 13: Managing adult social care

Legal Action Group publishes two very useful and up-to-date practitioner orientated books on this area of law.

Luke Clements *Community Care and the Law* (Legal Action Group, 2017).

Stephen Knafler *Adult Social Care Law* (Legal Action Group 2016)

Resource allocation systems

L. Clements and L. Series, 'Putting the cart before the horse: resource allocation systems and community care' (2013) *Journal of Social Welfare and Family Law* 35 (2): 207. The English Care Bill provides for all eligible community care service users to have a personal budget—and councils were required to ensure that 70 per cent of such users had one by April 2013. Almost all English authorities are experimenting with resource allocation systems (RASs) as a way of calculating these budgets. The article describes and critically analyses the nature of the RASs being used and the increasing body of case law they are attracting—in particular the Supreme Court's 2012 judgment in *R (KM) v Cambridgeshire County Council*. The article draws on research involving 20 local authorities concerning their use of RASs and represents the first in-depth legal examination of the claims made by proponents of the use of RASs. It challenges many of the claims made concerning such systems—in particular that they are 'more transparent', 'more equitable', 'simpler', and less discretionary than the traditional social work-led community care assessment process.

The *KM* and *Barry* cases are also considered in 'R (KM) v Cambridgeshire—care and confusion: thinking legally': <https://thinkinglegally.wordpress.com/2012/06/11/r-km-v-cambridgeshire-care-case-carers-rights>.

Independent living

T. Collingbourne, 'Administrative justice? Realising the right to independent living in England: power, systems, identities' (2013) *Journal of Social Welfare and Family Law* 35 (4): 475. Under Article 19 of the UN Convention on the Rights of Persons with Disabilities, disabled people have a right to live independently and to be included in the community. This article considers the potential for realization of that right through the English administrative justice system. It discusses models of administrative justice, and examines practical examples of the exercise of discretionary power in social care decision making, administration, and delivery. While some aspects of the current reconstruction in social care provision have succeeded in producing emancipatory outcomes, examples of continuing oppressive use of discretionary power still occur: in decision making, in the design of assessment questionnaires, and in the assessment experience. The article concludes that there is further to go before practice is aligned with meaningful, Convention-compliant change. Until then, realization in England of the right to independent living will remain partial, and the emancipatory purpose of the Convention compromised.

Complaints procedures

J. Gulland, 'Independence in complaints procedures: lessons from community care' (2009) *Journal of Social Welfare and Family Law* 31 (1): 59. This article looks at internal complaints procedures and considers the role of independent elements in procedures that are designed to be simple, informal, and low cost. Taking the example of local authority community care services as a case study, it discusses research which looked at the views of complainants, potential complainants, and those who run the procedure. Most people do not make formal complaints at all and very few people seek an independent review of their complaint. When they do seek such a review, they expect it to be transparently independent of the body complained about. The article concludes that the current system of local authority complaints review panels or committees does not provide the independent element that complainants seek.

Ensuring quality

A. Stewart, 'Choosing care: dilemmas of a social market' (2005) *Journal of Social Welfare and Family Law* 27 (3–4): 299. This article uses the lens of a personal experience of caring to reflect upon the provision of care services in England. It does so within the wider context of recent debates on the potential for a human rights culture within community care. The concept of independence, expressed as user choice in a social market of care, is central to government policy. The author, however, argues that this is a flawed approach and concludes that the starting point for policy and legal development should be the necessary interdependence of individuals.